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Secretary, U.S. Air Force

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PETER G. SEBALA,	)	CIVIL NO. 04-00404 SPK-LEK
	)	
Plaintiff,	)	DEFENDANT'S PROPOSED FINDINGS
	)	OF FACT AND CONCLUSIONS OF
vs.	)	LAW; CERTIFICATE OF SERVICE
	)	
JAMES G. ROCHE, DR.,	)	
SECRETARY, DEPARTMENT OF THE	)	
AIR FORCE,	)	TRIAL DATE: February 7, 2006
	)	TIME: 9:00 a.m.
Defendants.	)	JUDGE: Samuel P. King
	)	
_____	)	

DEFENDANT'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

Comes now James G. Roche, Secretary of the United States Department of the Air Force ("the Air Force"), by and through the United States Attorney for the District of Hawaii, and files this Findings of Fact and Conclusions of Law in accordance with the Rule 16 Scheduling Order.

PROPOSED FINDING OF FACTS

1. The Plaintiff applied and was not selected for a permanent position as a Mobile Equipment Servicer, WG-5806-06, with the 15<sup>th</sup> LRD/LGR at Hickam AFB, HI on April 7, 2003 which serves as the basis for this case.

2. The Plaintiff was born on 27 August 1949.

3. Mr. Randall Nunes hired the Plaintiff and was his supervisor for one year while the Plaintiff was employed as a temporary Mobile Equipment Servicer, WG-5806-06. The Plaintiff worked in this position was from January 2002 to January 2003.

4. Mr. Randall Nunes had observed the Plaintiff's work ethic and demeanor on a day-to-day basis for one-year period of time. Mr. Nunes had noticed instances where the Plaintiff did not demonstrate a strong work ethic and had a poor attitude towards authority.

5. During the period of time the Plaintiff was a temporary employee, he received one midterm feedback Air Force Form 860B documenting his performance in October 2002. His performance was documented as mediocre.

6. During the period of time the Plaintiff was a temporary employee, he had at least two instances of violent behavior towards authority.

7. The Plaintiff did have a trainer assigned to him when he began the temporary Mobile Equipment Servicer position. In

accordance with office policy, all new employees are given trainers.

8. Mr. Nunes was the selecting official for the Mobile Equipment Servicer, WG-5806-06, permanent position that was announced in March 2003.

9. The Plaintiff applied for the position as a Mobile Equipment Servicer, WG-5806-06, with the 15<sup>th</sup> LRD/LGR at Hickam AFB, HI.

10. Mr. Nunes received the applications of the top three applicants including the Plaintiff, Mr. Christopher Vargas, and Mr. Robert McCollum.

11. The Plaintiff's application included an application and resume that Mr. Nunes relied on in making a hiring decision.

12. Mr. Vargas supplied a resume with his application. Mr. Vargas also had been employed by the Air Force and had received positive documentation of his performance evaluation.

13. Instead of hiring the Plaintiff, Mr. Randall Nunes hired Mr. Christopher Vargas into the aforementioned position. This decision was based on Mr. Nunes' negative interaction with the Plaintiff and Mr. Vargas' application, resume, and previous work performance in a temporary position on Hickam AFB, HI.

14. The Plaintiff was notified he was not selected for the position on April 7, 2003 via letter. The Plaintiff then contacted Mr. Nunes for an explanation of why he was not hired.

Mr. Nunes replied that he hired the best qualified applicant.

15. Mr. Vargas began work in the Mobile Equipment Servicer, WG-5806-06, position in May 2003.

16. Mr. Nunes did not make any statement to Mr. Michael Oyadamori about selecting Mr. Vargas due to his age. Mr. Oyadamori dislikes Mr. Nunes because he has received derogatory paperwork from Mr. Nunes.

17. Mr. Nunes was the selecting official who selected the Plaintiff for the temporary Mobile Equipment Servicer, WG-5806-06 in January 2002. Mr. Nunes was also the selecting official who did not select the Plaintiff for the permanent Mobile Equipment Servicer, WG-5806-06 in April 2003.

18. Plaintiff's action in this Court was filed on July 7, 2004, alleging national origin and age discrimination. The national origin claim was stipulated to be dismissed with prejudice.

#### CONCLUSIONS OF LAW

1. The Plaintiff has established all elements of their prima facie case by a preponderance of the evidence.

2. The Defendant has established legitimate non-discriminatory reasons for their hiring decisions regarding the Plaintiff.

3. The Plaintiff failed to establish that the Defendant's non-discriminatory reasons for their hiring decision is pretext

for unlawful age discrimination.

4. As a result of the Plaintiff's failure to establish the Defendant's nondiscriminatory reasons were pretextual, the Plaintiff is not entitled to prevail. In accordance, the Plaintiff is not entitled to damages of any sort and costs shall be assessed against the Plaintiff.

DATED: January 25, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

/s/ Thomas A. Helper for  
R. Michael Burke

By \_\_\_\_\_  
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PETER G. SEBALA,	)	CIVIL NO. 04-00404 SPK-LEK
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Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
JAMES G. ROCHE, DR.,	)	
SECRETARY, DEPARTMENT OF THE	)	
AIR FORCE,	)	
	)	
Defendant.	)	
_____	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served upon the following at their last known addresses:

Served by First Class mail January 25, 2006

Venetia K. Carpenter-Asui, Esq.  
Haseko Center  
820 Mililani Street, Suite 812  
Honolulu, Hawaii 96813

Attorney for Plaintiff  
Peter G. Sebala

DATED: January 25, 2006, at Honolulu, Hawaii.

/s/ Myra Y. Peterson

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